

Introduced by Senator Leslie

February 18, 1998

An act to amend Section 646.9 of the Penal Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1796, as introduced, Leslie. Stalking: cyberstalking.

(1) Existing law prohibits which is defined as the willful, malicious, and repeated following or harassing of another, where a credible threat, as defined, has been communicated to the victim with the intent of placing the victim in reasonable fear for his or her safety.

This bill would expand the definition of credible threat to include threats communicated by means of a telecommunication device. By changing the definition of a crime, this bill would increase local prosecution and incarceration costs, and therefore would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. Section 646.9 of the Penal Code is
2 amended to read:

3 646.9. (a) Any person who willfully, maliciously, and
4 repeatedly follows or harasses another person and who
5 makes a credible threat with the intent to place that
6 person in reasonable fear for his or her safety, or the safety
7 of his or her immediate family, is guilty of the crime of
8 stalking, punishable by imprisonment in a county jail for
9 not more than one year or by a fine of not more than one
10 thousand dollars (\$1,000), or by both that fine and
11 imprisonment, or by imprisonment in the state prison.

12 (b) Any person who violates subdivision (a) when
13 there is a temporary restraining order, injunction, or any
14 other court order in effect prohibiting the behavior
15 described in subdivision (a) against the same party, shall
16 be punished by imprisonment in the state prison for two,
17 three, or four years.

18 (c) Every person who, having been convicted of a
19 felony under this section, commits a second or subsequent
20 violation of this section shall be punished by
21 imprisonment in the state prison for two, three, or four
22 years.

23 (d) In addition to the penalties provided in this
24 section, the sentencing court may order a person
25 convicted of a felony under this section to register as a sex
26 offender pursuant to subparagraph (E) of paragraph (2)
27 of subdivision (a) of Section 290.

28 (e) For the purposes of this section, “harasses” means
29 a knowing and willful course of conduct directed at a
30 specific person that seriously alarms, annoys, torments, or
31 terrorizes the person, and that serves no legitimate
32 purpose. This course of conduct must be such as would
33 cause a reasonable person to suffer substantial emotional
34 distress, and must actually cause substantial emotional
35 distress to the person.

36 (f) For purposes of this section, “course of conduct”
37 means a pattern of conduct composed of a series of acts
38 over a period of time, however short, evidencing a

1 continuity of purpose. Constitutionally protected activity
2 is not included within the meaning of “course of
3 conduct.”

4 (g) For the purposes of this section, “credible threat”
5 means a verbal or written threat, *a threat communicated*
6 *by means of a telecommunications device*, or a threat
7 implied by a pattern of conduct or a combination of
8 verbal or written statements and conduct made with the
9 intent to place the person that is the target of the threat
10 in reasonable fear for his or her safety or the safety of his
11 or her family and made with the apparent ability to carry
12 out the threat so as to cause the person who is the target
13 of the threat to reasonably fear for his or her safety or the
14 safety of his or her family. It is not necessary to prove that
15 the defendant had the intent to actually carry out the
16 threat. The present incarceration of a person making the
17 threat shall not be a bar to prosecution under this section.

18 (h) This section shall not apply to conduct that occurs
19 during labor picketing.

20 (i) If probation is granted, or the execution or
21 imposition of a sentence is suspended, for any person
22 convicted under this section, it shall be a condition of
23 probation that the person participate in counseling, as
24 designated by the court. However, the court, upon a
25 showing of good cause, may find that the counseling
26 requirement shall not be imposed.

27 (j) The sentencing court also shall consider issuing an
28 order restraining the defendant from any contact with
29 the victim, that may be valid for up to 10 years, as
30 determined by the court. It is the intent of the Legislature
31 that the length of any restraining order be based upon the
32 seriousness of the facts before the court, the probability
33 of future violations, and the safety of the victim and his or
34 her immediate family.

35 (k) For purposes of this section, “immediate family”
36 means any spouse, parent, child, any person related by
37 consanguinity or affinity within the second degree, or any
38 other person who regularly resides in the household, or
39 who, within the prior six months, regularly resided in the
40 household.

1 (l) The court shall consider whether the defendant
2 would benefit from treatment pursuant to Section 2684.
3 If it is determined to be appropriate, the court shall
4 recommend that the Department of Corrections make a
5 certification as provided in Section 2684. Upon the
6 certification, the defendant shall be evaluated and
7 transferred to the appropriate hospital for treatment
8 pursuant to Section 2684.

9 SEC. 2. No reimbursement is required by this act
10 pursuant to Section 6 of Article XIII B of the California
11 Constitution because the only costs that may be incurred
12 by a local agency or school district will be incurred
13 because this act creates a new crime or infraction,
14 eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition
17 of a crime within the meaning of Section 6 of Article
18 XIII B of the California Constitution.

19 Notwithstanding Section 17580 of the Government
20 Code, unless otherwise specified, the provisions of this act
21 shall become operative on the same date that the act
22 takes effect pursuant to the California Constitution.

